

REMARKS

Status of case

Claims 1-8, 10-15, 17-23, 25-32, 34-35, 37-49, 52-74, 76-87, 91-104, 107-113, 117-135 are pending. Applicant presents the following supplemental response to the Office Action dated May 15, 2009.

Official Notice:

Claims 31, 45, 47, 51, 65, 67, 79, and 85 were rejected under 35 U.S.C. §103(a) as being unpatentable over Rabinowitz et al (U.S. Publication No. 2003/0179891) in view of Official Notice. Applicant respectfully contends that, in addition to the reasons previously provided, the rejection is improper due to the taking of Official Notice.

MPEP Section 2144.03 states the following:

In limited circumstances, it is appropriate for an examiner to take official notice of facts not in the record or rely on “common knowledge” in making a rejection, however such rejections should be judiciously applied.

In the present application, the Examiner has relied on Official Notice for a substantial number of limitations in the claims – namely claims 31, 45, 47, 51, 65, 67, 79, and 85 – which is a far cry from the “limited circumstances” envisioned by the MPEP.

Second, the Office Action provides little, if any, support for its taking of Official Notice. Third, on a factual level, the Office Action’s taking of Official Notice is improper.

Claim 31 recites that the transfer function measures amplitude and phase at a single frequency or multiple frequencies. Applicants respectfully contend that it is not well known to measure amplitude and phase at a single frequency or multiple frequencies in the context of selecting a configuration for an audio system.

With regard to claim 45, the Office Action rejects claim 45 as being obvious in view of the Rabinowitz reference. The Office Action acknowledges that the Rabinowitz reference fails to teach the limitation claimed in claim 45. However, the Office Action takes Official Notice “that having types of loudspeakers comprise a monopole and dipole

loudspeaker are well known in the art.” Applicants respectfully disagree. In support, the inventors state that they disagree that analyzing the potential type of loudspeaker (such as selecting a monopole and dipole loudspeakers) as a parameter to reduce seat-to-seat variation is commonly known. They further state that in an example of a 2-speaker audio system, the methodology may statistically analyze different combinations of the types of speakers (such as monopole-monopole, monopole-dipole, dipole-monopole, and dipole-dipole). Analyzing these various combinations, particularly for different types of speakers (*e.g.*, monopole-dipole), to reduce seat-to-seat variation is not known. See Declaration of Inventors, ¶6 (previously submitted on November 2, 2007).

Claim 47 recites that the correction factors comprise gain, delay, and equalization. See also claim 85. Applicants respectfully contend that it is not well known to include each of gain, delay, and equalization in the context of selecting a configuration for an audio system.

Claim 65 recites that the parameter comprises volume correction and that selecting a value to increase efficiency comprises selecting a value that decreases the volume of at least one of the loudspeakers in the audio system. Emphasis added. Applicants respectfully contend that it is counterintuitive to “increase” efficiency by “decreasing” the volume. Applicants therefore contend that this is not merely a “designer’s choice” and is not well known in the art.

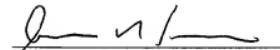
Claim 67 recites that the acoustic efficiency comprises a mean overall level divided by a total drive level for the predicted transfer function. Applicants respectfully contend that it is not well known to have acoustic efficiency comprising a mean overall level divided by a total drive level for the predicted transfer function in the context of selecting a configuration for an audio system.

Claim 79 recites that the statistical analysis ranks the predicted transfer functions based on at least one metric, and that selecting a configuration comprises selecting a configuration based on the ranking. Applicants respectfully contend that it is not well known to rank the predicted transfer function based on at least one metric or select a configuration based on the ranking in the context of selecting a configuration for an audio system.

SUMMARY

Applicant respectfully requests the Examiner to grant early allowance of this application. The Examiner is invited to contact the undersigned attorneys for the Applicant via telephone if such communication would expedite this application.

Respectfully submitted,



Amir N. Penn
Registration No. 40,767
Attorney for Applicant

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200